



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/431,519	11/01/99	CHUNG	S AH09480

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HM12/0329

EXAMINER

LEVY, N

ART UNIT	PAPER NUMBER
1616	8

DATE MAILED:

03/29/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No. 09 431579	Applicant(s) CHUNG et al
Examiner Neil Levy	Group Art Unit 1616 B

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 7/4/01
- ☒ Responsive to communication(s) filed on _____
 - ☐ This action is FINAL.
 - ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 1-42
- Of the above claim(s) 21-42
- ☒ Claim(s) _____ is/are pending in the application.
 - ☐ Claim(s) _____ is/are withdrawn from consideration.
 - ☐ Claim(s) _____ is/are allowed.
 - ☒ Claim(s) 1-20 is/are rejected.
 - ☐ Claim(s) _____ is/are objected to.
 - ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- 5
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
 - ☒ Notice of Reference(s) Cited, PTO-892
 - ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
 - ☐ Interview Summary, PTO-413
 - ☐ Notice of Informal Patent Application, PTO-152
 - ☐ Other _____

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Receipt is acknowledged of IDS, Request for Time, and Amendment of 8/29/00; 1/04/01 and 1/04/01 respectively.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 21-42 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 3.

Claims 1-13, 16, 17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Deasy 4874612.

The rejection of record is maintained.

Two formulations in one implant, of anabolic agents, are implants effective in cattle (Col.3, line 36-50). The active varies in concentration of the dual formulation (Col 3, lines 4-8). Added components do NOT interfere with the activity of the dual action A+B anabolic agents, which are those of the instant claims 9, 10.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deasy and Porter-GB 2397484 in view of Hornykiewytsch et al .

The rejection of record is maintained.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al 2546759.

The rejection of record is maintained.

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Claims 1-5, 7-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Ivy et al 4670249.

Growth hormones and Zeranol are implanted in cattle (see Claim 2) to increase feed efficiency and rate of growth (Claim 7) subcutaneously (Claim 13). Immediate effects attributable to growth hormone are seen (Table 3 week 1, F/G) while Zeranol is effect uses long term (final, F/G, Table 4). Dosages formulations are in the instant range (Col. 4, lines 3-21). Diluents are as are known in the art-The implant is artisan recognized forms (Col. 4, lines 22-30).

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deasy in view of Ivy et al, O'Callaghan et al '86 Sivaramakrishnan-5219572 and Kim et al 5744163.

Deasy (above) provides the instant implants, but not all attributes of the instant concentration, diluents and polymers are specified. But Ivy (above) shows use, if desired of 2 different anabolic agents, in any known implants (Col. 4, lines 22-29), thus, clearly in Deasy. The instant specification provides no guidance as to meaning of "instant" except, 28. Ivy shows efficacy at 1 week. The instant specification provides no guidance in accord with the claims, of the concentration of active anabolic agent, (Ivy does) or of the amount of active with polymer formulation (Deasy does). O'Callaghan further shows the same compound can be provided in show and quick acting anabolic implants; inclusive of oestradiol with oestradiol (p. 427) or oestradiol with trenbolone acetate anabolic efficacy is seen. Sivaramakrishnan show the diluents Example 8. The active (Col.5, top) is 1-70% of the formulation (instant claim 19 is 1-8%).

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Excipients are used. Kim show similar implants, utilizing ethyl cellulose, equivalent to the Deasy, Ivy wax (Col.3, lines 10-15).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to improve growth, with reduction in animal handling, would use Deasy, modified with particular ingredients and concentrations as are known in the art, in order to maximize compatibility, health, ease of administration and efficacy.

Ivy and O'Callahan teaches one having ordinary skill in the art would be motivated to perform these modifications, in order to increase efficacy. The particular %mix of active, is a function of the compatibility of these components, and length of time to market.

The selection of each component is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired.

There is no unusual and/or unexpected results obtained since the prior art is well aware of the various forms of implants, excipients, coatings, delivery methods, diluents, and active anabolic agents and the concentrations and amounts required. Applicant provides no objective of evidence of any criticality in these regards. Further, the open claim language permits of multiple interpretation of the relative amounts of agent to agent, agent to formulation, and formulation to formulation, to say nothing of the interpretation possible to the meaning of anabolic. However, although examiner does not find clear stipulation as to the meaning of claims 2-4 and 11 and 12,

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in the specification one of ordinary skill in the art of growing cattle would negate the bases for continuing of non enabling or scope first paragraph rejections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday to Friday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy:mv

March 23, 2001



NEIL S. LEVY
PRIMARY EXAMINER